IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

Crl.Rev.Pet.No. 613 of 1999()

CRA.173/1994 of ADDL.SESSIONS COURT, KOTTAYAM
ST.1594/1992 of JUDL.MAGISTRATE OF FIRST CLASS, ETTUMANUR

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REVN. PETITIONERS:APPELLANTS/ACCUSED

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1. V.S.SANTHOSH, S/O.SOMAN
   VELLYKANNIL
   KATTACHIRA P.O.
   ETTUMANOOR VILLAGE

2. V.D.PRASANNAN, S/O.DAMODARAN
   VELLYKANNIL
   PUNNATHURA WEST P.O.
   ETTUMANOOR VILLAGE.

BY ADV. SRI.SANTHOSH SUBRAMANIAN
SRI.T.A.SHAJI

RESPONDENTS: RESPONDENT/COMPLAINANT & STATE

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1. FOOD INSPECTOR
   ETTUMANOOR CIRCLE
   ETTUMANOOR.

2. STATE OF KERALA, REPRESENTED BY
   PUBLIC PROSECUTOR
   HIGH COURT OF KERALA
   ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRRP613/1999

ORDER ON CRL.M.P.NO.2738/99 IN CRL.R.P.NO.613/99

DISMISSED

19.11.2007 SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.A. TO JUDGE

K.R.UDAYABHANU, J

Crl.R.P.No.613 of 1999

Dated this the 19th day of November, 2007

O R D E R

The revision petitioners are the accused in S.T.No.1594/92 in the court of Judicial First Class Magistrate Court, Ettumanoor with respect to the offences under Sections 7(1) read with Section 16(1) (a) (i) of PFA Act and sentenced to undergo simple imprisonment for three months each and to pay a fine of Rs.500/- each and in default, to undergo simple imprisonment for one month each.

2. The prosecution case is that the first revision petitioner is the salesman and second revision petitioner is the licencee of Arathi Bakery and Restaurant conducted in Ettumanoor Panchayat and that on 3.8.1989 at 9.30 a.m. the Food Inspector collected the sample of boiled cow's milk kept for sale which was found to be adulterated on examination at Public Analyst Lab.

3. The evidence adduced in the matter consisted of the testimony of PWs' 1 and 2 and Exts. P1 to P19 and Ext. D1.

4. The contention stressed by the counsel for the revision petitioner is that the boiled cow's milk kept in the restaurant was not meant for sale as milk but in order to prepare tea, coffee etc. The counsel has relied on the decision reported in **Food Inspector vs. Abdul Khader** (1978 KLT 830) that milk being a primary food the sample of the same can be taken only if such milk is intended for sale as milk. It is pointed out that the only witness to support the case of the prosecution that boiled milk was kept for sale apart from the testimony of PW1, the Food Inspector, is that of PW2, the peon at the office of the Food Inspector. It is also pointed out that PW1 the Food Inspector has testified that the alleged outfit is an ordinary hotel. I find that the case set up by the revision petitioner is that the boiled milk kept in the restaurant was made for making tea and coffee has an edge over the contention of the prosecution that the milk was kept for sale especially as the usual practice is that coffee and tea is served in the restaurant and not milk as such. Hence, the absence of independent witness is relevant in the circumstances although it cannot laid as a general proposition that in every case there should be independent witness. Milk is collected not

from a milk booth but from a restaurant where the main business would be selling tea, coffee etc. In the circumstances, I find that the revision petitioners are entitled for benefit of doubt which is the prerogative of the accused in every criminal case. Of course, it is mentioned in the mahazar that the price of milk was also exhibited. It is suggested in the cross examination that the above sentence was added subsequently. Still, I find that the accused/revision petitioners are entitled for benefit of doubt as the article has been purchased from a restaurant. The conviction and sentence imposed on the accused is set aside. The accused is acquitted.

The criminal revision petition is disposed of accordingly.

K.R.UDAYABHANU,
JUDGE

csl